

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222277

DATE: August 18, 1986

MATTER OF: Julian W. Jacobson - Real Estate Broker's
Commission

DIGEST:

A transferred employee paid a 9 percent real estate commission on the sale of his residence incident to a transfer. However, the agency determined that the prevailing broker's commission rate in the area was 7 percent, and his claim for reimbursement for the additional 2 percent was denied. Employee claimed higher rate was necessary to expedite sale of house because of conditions in local housing market. Employee is not eligible for reimbursement of 2 percent difference since the statute and the prevailing regulations require that the applicable rate is the rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee. If employee, to expedite sale, pays commission greater than that usually charged, he cannot be reimbursed for the extra commission.

This decision is in response to a request from William E. Burrows, Jr., an authorized certifying officer of the Federal Bureau of Investigation (FBI), Department of Justice. The issue presented is the propriety of reimbursing an additional 2 percent real estate broker's commission to a transferred employee. For the following reasons, we hold that reimbursement cannot be made.

BACKGROUND

Mr. Julian W. Jacobson was transferred from Tampa, Florida, to Miami, Florida. Incident to the transfer, Mr. Jacobson attempted to sell his home in Tampa, privately, and then through a real estate broker. Almost a year passed and the home had still not been sold. Mr. Jacobson reviewed

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the FBI Guidebook for transferred employees and conferred informally with the Voucher Unit at FBI Headquarters and allegedly was told that the government would pay a 9 percent real estate broker's commission on the sale of his house, "in accordance with the guidelines set forth in the FBI Guidebook." Mr. Jacobson then proceeded to negotiate a 9 percent broker's commission with a real estate agent and the house was successfully sold on this basis. Mr. Jacobson was contacted by Home Equity Company, a participant in the FBI Relocation program, which assisted him with his closing.^{1/} Home Equity told Mr. Jacobson that they were only authorized to pay him a 7 percent real estate broker's commission, and that he would have to deal with the FBI for the additional 2 percent.

Mr. Jacobson filed a voucher with the FBI and his claim was denied on the basis that the government could only reimburse him for the customary and reasonable charges for real estate broker's fees for the state of Florida, which amounted to 7 percent. Mr. Jacobson states that due to the conditions in the local housing market, a commission of 9 percent was reasonable and should be reimbursed.

DISCUSSION

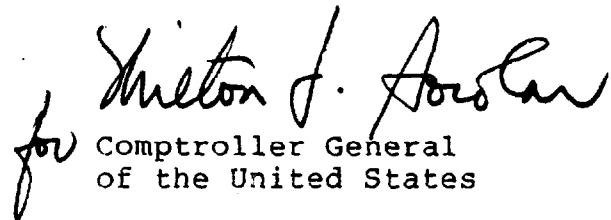
The broker's fee that is reimbursable to an employee who is selling his house and transferring to another station is limited by statute and may not exceed the amount customarily charged in the locality where the residence is located. 5 U.S.C. § 5724a(a)(4) (1982). See also para. 2-6.2a of the Federal Travel Regulations (Supp. 4, Aug. 23, 1982) (FTR), incorp. by ref. 41 C.F.R. § 101-7.003 (1985). In processing Mr. Jacobson's claim under the statute and the prevailing regulations, the FBI established that 7 percent was the prevailing real estate broker's commission for the state of Florida. Thus, the agency held that a 7 percent commission was the proper rate for reimbursement.

We agree with the agency's determination since the regulations require that the applicable commission rate is the rate generally charged by all the real estate brokers in the area, not the rate charged by the particular

^{1/} Agencies can now contract for such relocation services. See 5 U.S.C. § 5724c (Supp. I, 1983), as added by Pub. L. No. 98-151, 97 Stat. 978 (1983).

broker used by the employee to sell his residence. Raymond L. Hipsler, B-214555, August 28, 1984. Further, these provisions do not allow reimbursement for broker's commissions above the general area rate, even where the higher commission rate was needed to expedite the sale. Judi A. Williams, B-205584, August 2, 1982. Finally, it is unfortunate if, as Mr. Jacobson alleges, he received erroneous advice. However, the Government is not responsible for such erroneous advice even if the agent is acting within his apparent authority. See 55 Comp. Gen. 131 (1976), and court cases cited.

Accordingly, we hold that the 2 percent commission paid by Mr. Jacobson above the prevailing commission rate in the area cannot be reimbursed.


for Comptroller General
of the United States